

Application No. 09/980,058
Amendment Dated December 28, 2004
Reply to Office Action of June 29, 2004

CONDITIONAL PETITION FOR EXTENSION OF TIME

If entry and consideration of the amendments above requires an extension of time, Applicants respectfully request that this be considered a petition therefore. The Assistant Commissioner is authorized to charge any fee(s) due in this connection to Deposit Account No. 14-1263.

ADDITIONAL FEE

Please charge any insufficiency of fees, or credit any excess, to Deposit Account No. 14-1263.

REMARKS/ARGUMENTS

Claims 1-16 were pending in this application. Claims 4-6 were withdrawn. By this Amendment, claims 1, 2, and 12-13 have been amended and claims 3, 10-11, and 16 have been canceled without prejudice or disclaimer. No new matter has been added. Accordingly, claims 1-2, 7-9, and 12-15 are pending.

Objections to the Abstract

The Examiner objected to the abstract because it exceeded 150 words and was not narrative. In response, applicants have amended the abstract which is now narrative and does not exceed 150 words.

Applicants, therefore, respectfully request that the Examiner reconsider and withdraw this objection.

Claim Rejections under 35 U.S.C. 112, second paragraph

The Examiner rejected claims 1-3 and 7-16 as being indefinite for failing to particularly point out and distinctly claim the subject matter.

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In response, applicants have amended claim 1 to take out the phrase "at least one additional amino acid," and the phrase "nine contiguous amino acids." In addition, from claim 1, the word "functionality" has been taken out. In addition, "i.e." has been deleted. Also, applicants have amended claim 1 which now recites, "wherein said peptide has the ability to induce the production of interferon- γ or TNF- α in CD8+ T cells."

In response to the Examiner's assertion that in claim 1 compared to claim 2 that SEQ ID NOS: 9, 10, and 14 are different, applicants have canceled the SEQ ID NOS 9, 10, and 14 from claim 1.

In respect to claim 10, applicants have canceled claim 10. In addition, claims 12-13 have been amended which now have a correlation step and claim 13 has been amended to clarify what the number of induced T cells are compared against.

Applicants, therefore, respectfully request that the Examiner reconsider and withdraw these rejections.

Claim Rejections under 35 U.S.C. 112, first paragraph

The Examiner rejected claims 1, 3, and 7-16 as failing to comply with the enablement requirement.

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In response, applicants have amended independent claim 1 so that the phrase "essentially have the functionality" has been taken out. Claims 7-9, and 12-15 either directly or indirectly depend on claim 1. Applicants have also canceled claims 3, 10-11 and 16.

Applicants, therefore, respectfully request that the Examiner reconsider and withdraw this rejection.

The Examiner rejected claims 1 and 7-16 as failing to comply with the written description requirement.

In response, applicants have amended independent claim 1 so that the words "insertion" and "deletion" have been taken out. Claims 7-9, and 12-15 either directly or indirectly depend on claim 1. Applicants have also canceled claims 3, 10-11 and 16.

Applicants, therefore, respectfully request that the Examiner reconsider and withdraw this rejection.

Claim Rejections under 35 U.S.C. 102(b)

The Examiner rejected claims 1, 2, and 10 as being anticipated by Alp et al, rejected claims 14-16 as being anticipated by Berencsi et al, and rejected claims 1 and 10 as being anticipated by He et al.

In response to the Alp reference, applicants assert that the peptide listed in Alp does not contain the exact sequence as listed in SEQ ID NO: 10. Independent claim 1 has been amended to state, "An isolated and purified peptide selected from the group consisting of," which means that the sequence listed for SEQ ID NO: 10 only contains those sequences listed in SEQ ID NO: 10. The sequence listed in SEQ ID NO: 10 is only a part of the whole sequence listed in the Alp reference for peptide seven in the Alp reference. The Alp reference has more than nine amino acids listed in peptide seven. There is nothing to suggest that this C-terminal portion of this peptide would have the ability to induce IFN-g or TNF in CD8 T-cells. In order to be anticipated, the reference must teach every element of the claimed invention. The Alp reference fails to teach every element of the claimed invention. Claim 2 depends on claim 1 and claim 10 has been canceled.

In response to the Berencsi reference, applicants assert that there is no indication that the exon mentioned encodes the SEQ ID NO:2. Applicant had amended claim 1 to limit the size of N and C terminal extensions by deleting the phrase, "or at least one further amino acid outside the peptide or peptide derivative." Thus, one cannot give a broad interpretation of the claims to include polypeptides substantially larger than SEQ ID NO:2, therefore, there is no indication that the reference teaches SEQ ID NO:2. The claimed

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peptides do not encompass the whole IE-1-protein. Claims 14-15 depend on claim 1. In addition, claim 16 has been canceled.

In response to the He article, applicants assert that there is no indication that the peptides mentioned in He, encode SEQ ID NO:2. Applicant had amended claim 1 to limit the size of N and C terminal extensions by deleting the phrase, "or at least one further amino acid outside the peptide or peptide derivative." Thus, one cannot give a broad interpretation of the claims to include polypeptides substantially larger than SEQ ID NO:2, therefore, there is no indication that the reference teaches SEQ ID NO:2. The claimed peptides do not encompass the whole IE-1-protein. Claim 10 has been canceled.

Applicants, therefore, respectfully request that the Examiner reconsider and withdraw these rejections.

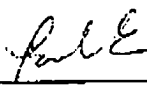
CONCLUSION

Based on the foregoing remarks it is believed that the claim is in condition for allowance.

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Respectfully Submitted,

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